



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

COPY
COPY

JUL - 5 2005

Honorable Nancy S. Grasmick
State Superintendent of Schools
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

Dear Superintendent Grasmick: *Nancy*

This is to inform you that we have conditionally approved Maryland's Eligibility Documents, including assurances and certifications, for Federal Fiscal Year (FFY) 2005 under Part B of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for conditional approval is based on our receipt of the State's application submitted by the Maryland State Department of Education to the U.S. Department of Education, Office of Special Education Programs, on May 9, 2005 and revised June 30, 2005 (Use of Funds) in which it assures that it will:

1. Operate consistent with all requirements of PL 108-446 and applicable regulations; and
2. Make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of Part B of the IDEA, as amended, as soon as possible, and not later than July 1, 2006. Section II of the State's application (which is incorporated by reference and enclosed with this grant letter) identifies the IDEA statutory sections for which the State needs to amend policies and procedures and the timelines by which the State will amend its policies and procedures in order to comply with Part B of the IDEA. Within Section II, the State has included the date by which it expects to complete necessary changes associated with any policies and procedures that are not yet in compliance with the requirements of Part B of the IDEA, as amended.

Please note that as part of your Eligibility Documents for FFY 2005, your State has made an assurance, under 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. Any changes made by the State, after OSEP approval, to policies and procedures needed to comply with Part B of the IDEA, must meet the applicable public participation requirements, including those in 20 U.S.C. 1232d(b)(7).

The Office of Special Education Programs (OSEP) Monitoring Report, issued to MSDE on July 26, 2001, identified four areas of noncompliance. MSDE has submitted documentation providing evidence of compliance with two of these issues. However, MSDE has failed to demonstrate compliance in the remaining two areas. Specifically, OSEP determined that MSDE failed to ensure that removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §300.550(b)(2)). Additionally, MSDE failed to ensure that the services provided to the child address all of the child's identified special education and related services needs, in accordance with the child's IEP (34 CFR §300.300(a)(3)(i)). Therefore, the Maryland FFY 2005 IDEA Part B grant awards are being released subject to FFY 2005 Special Conditions, as set forth in Enclosure D, that are being imposed pursuant to the Department's authority in 34 CFR §80.12.

400 MARYLAND AVE., S.W., WASHINGTON, D.C. 20202
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Page 2 - Honorable Nancy S. Grasmick

The reasons for doing so and the special conditions are detailed in Enclosure D. Maryland must administer these awards both in keeping with the applicable provisions of Federal law and regulations and the Special Conditions attached to the grant award document. Acceptance by Maryland of these grant awards constitutes an agreement by the State to comply with the Special Conditions.

Enclosed are grant awards for funds currently available under the Department of Education FFY 2005 Appropriations Act for the Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are for use primarily in school year 2005-2006 and are available for obligation by States from July 1, 2005 through September 30, 2007.

The amount in your award for Section 619 represents the full amount of funds to which you are entitled. However, the amount shown in your award for the Section 611 program is only part of the total funds that will be awarded to you for FFY 2005. Of the \$10,589,745,824 appropriated for Section 611 in FFY 2005, \$5,176,745,824 is available for awards on July 1, 2005, and \$5,413,000,000 will be available on October 1, 2005.

Under the Section 611 formula, subject to certain maximum and minimum funding requirements, State allocations are based on the amount that each State received from FFY 1999 funds, the general population in the age range for which each State ensures a free appropriate public education (FAPE) to all children with disabilities, and the number of children living in poverty in the age range for which each State ensures FAPE to all children with disabilities. Section 619 funds are allocated to States subject to certain maximum and minimum funding requirements, based on the amount that each State received from FFY 1997 funds, the general population of children age 3 to 5, and the number of children living in poverty in the age range 3 to 5.

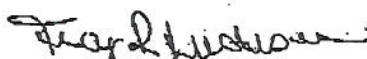
Enclosure B provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure B shows funding levels for distribution of Section 611 funds and the parameters for within-State allocations. Table II in Enclosure B shows your State-specific information for within-State distribution of 611 funds based on your State's application. If you disagree with the information in Enclosure B Table II, notify your State contact immediately.

Enclosure C provides a short description of how Section 619 funds were allocated and how those funds can be used. In addition, Table III in Enclosure C shows State-by-State funding levels for distribution of Section 619 funds.

Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Therefore, by accepting this grant a State is expressly agreeing to a waiver of Eleventh Amendment immunity as a condition of IDEA funding.

We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,



Troy R. Gustesen
Acting Director
Office of Special Education
Programs

Enclosures

cc: Carol Ann Baglin

Enclosure B

IDEA Grants to States Program (Part B, Section 611)

Explanation of the FFY 2005 Allocation Table (Table 1)

Total Grant Award (Column A of Table I)

Column A includes your total grant award for FFY 2005. The amount that you have received in the accompanying grant award, plus the additional funds that you will receive in October 2005, will make up your total award amount.

State grants are calculated as follows: States are first provided an amount equal to the amount they received in FFY 1999. Of the funds in excess of the FFY 1999 level, 85% are allocated to States on the basis of their relative populations of children aged 3 through 21 who are the same age as children with disabilities for whom the State ensures the availability of FAPE and 15% on the relative populations of children of those ages who are living in poverty. The statute also contains a number of floors and ceilings below and above which a State's allocation may not fall.

Section 611 Base Allocation (Column B of Table I)

The amount shown in Column B is the portion of the LEA flow-through amount that must be distributed to LEAs based on the amounts that the LEAs would have received from FFY 1999 funds had the State education agency (SEA) flowed through 75% of the State award to LEAs. Note that this amount is less than the minimum amount that States were required to provide to LEAs from FFY 1999 funds. The Part B regulations based on the 1997 Amendments clarify how adjustments to the base payment amounts for LEAs are made. The proposed regulations based on the 2004 Amendments do not change these provisions.

Maximum Set-aside Available for Administration (Column C of Table I)

Column C includes the maximum State set-aside amount for administration. Before the IDEA was amended by the Individuals with Disabilities Education Improvement Act of 2004, the maximum set aside for administration was taken as a percentage of the amount available for State level activities. The maximum amount available for administration is now calculated separately from the amount for other State-level activities. Beginning with FFY 2005, States may reserve not more than the greater of the maximum amount the State was eligible to reserve for State administration for fiscal year 2004 or \$800,000, as adjusted for inflation. For each fiscal year thereafter, each amount is cumulatively adjusted by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers (CPIU), published by the Bureau of Labor Statistics of the Department of Labor. The CPIU increase for FFY 2005 is approximately 3.19%. The \$800,000 adjusted for inflation for FFY 2005 is \$825,514.

Each Outlying Areas, may reserve for each fiscal year not more than 5% of the amount the Outlying Area receives under this program or \$35,000, whichever is greater.

Maximum Set-aside Available for Other State Level Activities (Columns D – G of Table I)

The maximum level of funding that may be set aside from a State's total allocation for State-level activities, other than administration, is contingent upon the amount that the State actually sets aside for administration and whether the State opts to establish a local educational agency high-risk pool under IDEA, section 611(e)(3). For FFY 2005:

- (1) If the actual amount a State will set aside for State administration is over \$850,000 and the State will use funds from its award to support a high-risk pool, the maximum amount

the State may set aside of its total award for State level activities (other than administration) is 10.0%.

- (2) If the actual amount a State will set aside for State administration is over \$850,000 and the State will not use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State level activities (other than administration) is 9.0%.
- (3) If the actual amount a State will set aside for State administration is \$850,000 or less and the State will use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State level activities (other than administration) is 10.5%.
- (4) If the actual amount a State will set aside for State administration is \$850,000 or less and the State will not use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State level activities (other than administration) is 9.5%.

SEAs are required to use some portion of these State Set-aside funds on monitoring, enforcement, and complaint investigation and to establish and implement the mediation process required by Part B, section 615(e), including providing for the costs of mediators and support personnel. In addition, States setting aside funds for a risk pool, as provided for under section 611(e)(3), must reserve 10% of the amount the State reserved for State-level activities for the risk pool.

SEAs also may use State set-aside funds: (1) for support and direct services, including technical assistance, personnel preparation, and professional development and training; (2) to support paperwork reduction activities, including expanding the use of technology in the IEP process; (3) to assist LEAs in providing positive behavioral interventions and supports and mental health services to children with disabilities; (4) to improve the use of technology in the classroom by children with disabilities to enhance learning; (5) to support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities; (6) for development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to post-secondary activities; (7) to assist LEAs in meeting personnel shortages; (8) to support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities; (9) for alternative programming for children with disabilities who have been expelled from school, are in correctional facilities, are enrolled in State-operated or State-supported schools, and are in charter schools; (10) to support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities; in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965; and, (11) to provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in 1116(e) of the Elementary and Secondary Education Act of 1965 to children with disabilities, in schools or LEAs identified for improvement under section 1116 of the Elementary and Secondary Education Act of 1965 on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) the Elementary and Secondary Education Act of 1965.

Section 611 Population/Poverty

The minimum amount that a State must flow through to LEAs based on population/poverty equals the total award (Column A) minus the LEA base allocation (Column B), the maximum amount available for administration (Column C), and the maximum amount available for other State-level activities (Column D, E, F, or G). Of this amount, 85% is distributed on a pro rata basis to LEAs according to public and private elementary and secondary school enrollment, and 15% on a pro rata basis to LEAs according to the number of children in LEAs living in poverty, as determined by the State.

Funding Notes

The total minimum amount that a State must flow through to local educational agencies (LEAs) is comprised of the base allocation and population and poverty amounts. This amount is separate from any funds that the State may choose to flow through to LEAs from its State set-aside funds. Please note that there are no funds set aside for Capacity Building and Improvement Activities. The Individuals with Disabilities Education Improvement Act of 2004 eliminated the authority for these subgrants.

TABLE II**MARYLAND****Administration**

You may revise any of the numbers you have provided for Administration by up to 10 percent of the total amount that you reported for Administration (\$332,489) without the approval of the Department of Education, subject to the following limitations:

For Administration, you reported that you would use a total of	\$3,324,892
You may not increase this amount above your maximum for Administration of.....	\$3,324,892
For the 4 activities specified in section 1411(e)(6) of the IDEA, you reported that you would use a total of	\$0
For support and direct services, including technical assistance, personnel preparation, and professional development and training.....	\$0
To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.....	\$0
To assist local educational agencies in meeting personnel shortages.....	\$0
To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.....	\$0
At the total level that you reported for Administration, you may use a maximum of	\$102,760
For every dollar that you increase the total set aside for Administration above..... (but within the maximum allowed for Administration), the maximum amount that you may set aside for section 1411(e)(6) activities is also increased by one dollar, up to a maximum of	\$3,324,892 \$102,760
For every dollar that you decrease the amount that you set aside for Administration, down to a level of	\$3,222,132
the maximum amount that you may set aside for section 1411(e)(6) activities is also reduced by one dollar.	

Other State-Level Activities

You may revise any of the numbers you have provided for Other State-Level Activities by up to 10 percent of the total amount that you reported for Other State-Level Activities (\$1,653,417) without the approval of the Department of Education, subject to the following limitations:

For Other State-Level Activities, you reported that you would use a total of	\$16,634,165
You may not increase this amount above your maximum for Other State-Level Activities of.....	\$16,634,165

For the Required Activity - For monitoring, enforcement, and complaint investigation - you must spend at least \$1.

For the Required Activity - To establish and implement the mediation process required by 20 U.S.C. 1415(e), including providing for the cost of mediators and support personnel - you must spend at least \$1.

For the High Cost Fund, you reported that you would use a total of.....	\$0
This amount is 0.00 percent of the total amount you proposed for Other State-Level Activities.	

If you include any funding for a High Cost Fund, the amount used for the High Cost Fund must be at least 10 percent of the total amount set aside for Other State-Level Activities. If the total amount for Other State-Level Activities is increased, you must ensure that at least 10 percent of that amount will be used for the High Cost Fund.



U.S. Department of Education

Washington, D.C. 20202

GRANT AWARD NOTIFICATION

1 RECIPIENT NAME: MARYLAND DEPARTMENT OF EDUCATION 200 WEST BALTIMORE STREET BALTIMORE, MD 21201	5 AWARD INFORMATION PR/AWARD NUMBER H027A050035 ACTION NUMBER 01 ACTION TYPE New AWARD TYPE Formula																				
2 PROJECT DESCRIPTION 34.027A STATE GRANTS	6 AWARD PERIODS BUDGET PERIOD 07/01/2005 - 09/30/2006 FEDERAL FUNDING PERIOD 07/01/2005 - 09/30/2006																				
3 EDUCATION STAFF RECIPIENT STATE DIRECTOR CAROL A. BAGLIN (410) 767 - 0238 EDUCATION PROGRAM CONTACT Ruth E. Fyder (202) 245 - 7629 EDUCATION PAYMENT CONTACT GAPS PAYEE HOTLINE (888) 336 - 8930	7 AUTHORIZED FUNDING CURRENT AWARD AMOUNT \$89,508,362.00 PREVIOUS CUMULATIVE AMOUNT \$0.00 CUMULATIVE AMOUNT \$89,508,362.00																				
4 KEY PERSONNEL N/A	8 ADMINISTRATIVE INFORMATION DUNS/SSN 183071471 REGULATIONS CFR PART 300 EDGAR AS APPLICABLE ATTACHMENTS F																				
9 LEGISLATIVE AND FISCAL DATA AUTHORITY: PL 102-119 INDIVIDUALS WITH DISABILITIES EDUCATION ACT PROGRAM TITLE: SPECIAL EDUCATION - GRANTS TO STATES CFDA/SUBPROGRAM NO: 34.027A <table border="1"> <thead> <tr> <th>FUND CODE</th> <th>FUNDING YEAR</th> <th>AWARD YEAR</th> <th>ORG CODE</th> <th>CATEGORY</th> <th>LIMITATION</th> <th>ACTIVITY</th> <th>CFDA</th> <th>OBJECT CLASS</th> <th>AMOUNT</th> </tr> </thead> <tbody> <tr> <td>0300M</td> <td>2005</td> <td>2005</td> <td>EH000000</td> <td>B</td> <td>K90</td> <td>000</td> <td>027</td> <td>4101A</td> <td>\$89,508,362.00</td> </tr> </tbody> </table>		FUND CODE	FUNDING YEAR	AWARD YEAR	ORG CODE	CATEGORY	LIMITATION	ACTIVITY	CFDA	OBJECT CLASS	AMOUNT	0300M	2005	2005	EH000000	B	K90	000	027	4101A	\$89,508,362.00
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TERMS AND CONDITIONS

- (1) WHEN ISSUING STATEMENTS, PRESS RELEASES, REQUESTS FOR PROPOSALS, BID SOLICITATIONS, AND OTHER DOCUMENTS DESCRIBING THIS PROJECT OR PROGRAMS FUNDED IN WHOLE OR IN PART WITH FEDERAL MONEY, ALL GRANTEES RECEIVING FEDERAL FUNDS, INCLUDING BUT NOT LIMITED TO STATE AND LOCAL GOVERNMENTS, SHALL STATE CLEARLY:

- 1) THE DOLLAR AMOUNT OF FEDERAL FUNDS FOR THE PROJECT,
- 2) THE PERCENTAGE OF THE TOTAL COST OF THE PROJECT THAT WILL BE FINANCED WITH FEDERAL FUNDS, AND
- 3) THE PERCENTAGE AND DOLLAR AMOUNT OF THE TOTAL COST OF THE PROJECT THAT WILL BE FINANCED BY NON-GOVERNMENTAL SOURCES.

AS OF 07/01/97, FEDERAL FISCAL YEAR (FFY) WILL REFER TO THE YEAR THE FUNDS WERE APPROPRIATED.

- (2) UNDER THE "TYDINGS AMENDMENT," SECTION 421(b) OF THE GENERAL EDUCATION PROVISIONS ACT, 20 U.S.C. 1225(b), ANY FUNDS THAT ARE NOT OBLIGATED AT THE END OF THE FEDERAL FUNDING PERIOD SPECIFIED IN BLOCK 6 SHALL REMAIN AVAILABLE FOR OBLIGATION FOR AN ADDITIONAL PERIOD OF 12 MONTHS.


AUTHORIZING OFFICIAL7/1/05
DATE

Enclosure C**IDEA Preschool Grants Program
(Part B, Section 619)****Explanation of the FFY 2005 Allocation Table
(Table III)**

Column A includes your total grant award for Federal fiscal year (FFY) 2005. In general, grants are calculated as follows: States are first provided an amount equal to the amount they received in FFY 1997. Of the funds in excess of the FFY 1997 level, 85% are allocated to the States on the basis of their relative population of children aged 3 through 5 and 15% on the relative population of children in this age range who are living in poverty. The statute also contains a number of floors and ceilings below and above which a State's allocation may not fall.

For fiscal year 2005, the final appropriation for the Preschool Grants program represents a small decrease below the amount for fiscal year 2004. Section 619(c)(3) of the Individuals with Disabilities Education Act specifies how funds are allocated under this program when the amount appropriated is less than for the prior fiscal year. At this level of decrease, the IDEA requires that each State first be allocated the amount it received for fiscal year 1997. The remaining funds are allocated based on the relative amount of the increase in funding that the State received between Federal fiscal years 1997 and 2004, as compared to the total of such increases for all States. The total State awards are shown in Column A.

Within the State allocation, the LEA base allocations (Column C) are the same as the amounts for FFY 2004. However, the Minimum Flow through to LEAs (Column B) and population/poverty (Column D) are reduced slightly, reflecting the decrease in the appropriation for FFY 2005.

Column E indicates the maximum State set-aside (including funds for administration) and Column F indicates the maximum portion of the State set-aside amount that may be used for administration. State set-aside amounts are limited to the maximum amount that a State could set aside in the prior FFY, plus an adjustment based on the lesser of the rate of inflation or the percentage increase in the SEA's allocation over the preceding fiscal year. Since there was no percentage increase in the SEA's allocation over the preceding fiscal year, the amount available for the State set-aside is the same as the amount available for this purpose in fiscal year 2004.

SEAs may use the State set-aside funds for administration (limited to no more than 20% of the total allowable set-aside amount), and for: (1) support services which may benefit children with disabilities younger than 3 or older than 5, as long as those services also benefit children with disabilities aged 3 through 5; (2) direct services for children with disabilities who are eligible for services under Section 619; (3) activities at the State and local levels to meet the performance goals established by the State in their State Part B application; (4) supplementing other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families (up to 1 percent of the amount received under this program); to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C to children with disabilities who are eligible for services under Section 619 and who previously received services under Part C until such children enter, or are eligible under State law to enter, kindergarten; or (6) at the State's discretion, to continue service coordination or case management for families who receive services under Part C. Funds that a State sets aside may be distributed to LEAs, at the State's discretion, in any manner determined appropriate by the State.

Column G is the percentage that the maximum State set-aside amount (including funds for administration) represents of the total award. Column H is the percentage of the total award that may be used for administration.



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AUTHORIZING OFFICIAL7/7/05
DATE

ENCLOSURE D

SPECIAL CONDITIONS

Under the Individuals with Disabilities Education Act (IDEA), public agencies must ensure that removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §300.550(b)(2)). Additionally, pursuant to IDEA, public agencies are required to ensure that the services provided to the child address all of the child's identified special education and related services needs, in accordance with the child's IEP (34 CFR §300.300(a)(3)(i)).

The Office of Special Education Programs (OSEP) Monitoring Report, issued July 26, 2001, identified four areas of noncompliance. The State failed to ensure:

1. students with disabilities are removed from the least restrictive environment (LRE) only if the child's disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily;
2. all needed related services are provided as a part of a free appropriate public education (FAPE);
3. students with disabilities placed in nonpublic schools participate in Statewide assessments; and
4. State complaint timelines are met, unless exceptional circumstances require extensions beyond the 60-day timeframe.

In OSEP's July 8, 2004 notification of approval of Maryland's Federal Fiscal Year (FFY) 2004 Eligibility Documents, OSEP expressed concern for the status of Maryland's correction of the first two of these issues. Although the State has taken some steps to resolve these issues, Maryland has not yet demonstrated compliance under Part B of the IDEA with regard to these requirements. As explained in the following section, the Department has determined that Maryland has not demonstrated compliance with all of the terms and conditions of the Federal Fiscal Year (FFY) 2004 awards under Part B of the IDEA regarding these requirements, and under the authority of the Education Department General Administrative Regulations, at 34 CFR §80.12, is imposing Special Conditions on Maryland's FFY 2005 grant awards under Part B.

I. Basis for Requiring Special Conditions

OSEP's July 2001 Monitoring Report (Report) found that Maryland State Department of Education (MSDE) did not: 1) ensure that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §300.550(b)(2)); 2) ensure that the services provided to the child address all of the child's identified special education and related services needs, in accordance with the child's IEP (34 CFR §300.300(a)(3)(i)); 3) demonstrate that children with disabilities are included in general State and districtwide assessment programs with appropriate accommodations and modifications in the administration of the assessment, if necessary (34 CFR §300.138(a)); and 4) ensure State compliant timelines are met, unless exceptional circumstances require extensions beyond the 60-day timeframe (34 CFR §300.661(a)(b)).

In response to OSEP's 2001 Report, MSDE issued the Maryland State Improvement Plan (Improvement Plan) in September 2001 with subsequent revisions in March 2002. On August 8, 2002, OSEP approved the State's plan for implementation subject to revisions of the timelines on compliance issues to show full compliance within a year of the August 2002 letter, and to incorporate additional changes to the plan consistent with the comments contained in the August 2002 letter. The approval was also based on OSEP's understanding that Maryland's revised monitoring system was sufficient to identify and correct all areas of Part B noncompliance. MSDE was required to submit the revised Improvement Plan by August 30, 2002.

On August 28, 2002, MSDE submitted the amended Improvement Plan to address the issues in the August 2002 letter from OSEP. MSDE submitted semi-annual reports of progress on December 20, 2002 and July 2, 2003 that identified the strategies undertaken and the impact of those strategies in correcting

the identified areas of noncompliance. On December 22, 2003, OSEP informed MSDE that OSEP's review of progress reports determined that the data did not demonstrate substantial progress towards correcting noncompliance in the areas identified in OSEP's 2001 Report. MSDE was required to correct the noncompliance and submit to OSEP in a final report by January 31, 2004 data for each of the areas demonstrating noncompliance had been corrected. On January 31, 2004, MSDE submitted the final report of the Improvement Plan.

On July 23, 2004 OSEP responded to MSDE's FFY 2002 Annual Performance Report (APR) and the January 2004 final report of the Improvement Plan. OSEP's July 2004 APR letter informed MSDE that the data and information demonstrated satisfactory progress towards correcting the noncompliance related to complaint timelines, and that the data and analysis provided by the State demonstrated correction of noncompliance related to lack of participation in statewide assessments of students placed in non-public schools. However, while the State implemented the strategies for correction and reported improvements in LRE data related to placement of students with disabilities in regular education and resource room, there was insufficient evidence that placement decisions were being made consistent with the LRE requirements, and that MSDE was ensuring timely correction of identified deficiencies at the local level. In addition, MSDE presented data to indicate an increase in related service personnel and that it monitored local staffing plans to verify that vacancies had been filled. However, MSDE did not provide evidence that students were receiving all related services indicated in their IEP. MSDE was required to submit to OSEP, within 60 days of the July 23, 2004 letter, data and analysis that demonstrated noncompliance had been corrected in the two areas listed above. MSDE was informed that it could satisfy this requirement by providing documentation that subsequent to identification of noncompliance through State monitoring, local education agencies developed corrective action plans and the State conducted follow-up activities, including monitoring activities, to verify correction related to LRE and ensuring all children receive the related services as indicated on their IEPs.

On September 21, 2004, MSDE reported information about its current strategies to ensure the implementation of the LRE and related services requirements. However, MSDE was unable to provide evidence that identified noncompliance in these areas had been corrected at the local level. By letter of January 19, 2005 OSEP stated that MSDE would be required to provide monitoring information for specified LEAs showing correction of identified noncompliance with LRE and related services provisions at the time of OSEP's verification visit in March 2005. During the verification visit, OSEP interviewed staff, reviewed monitoring reports and other documents and determined that MSDE was able to identify noncompliance in these areas. However, OSEP was unable to verify the State had corrected noncompliance with regard to the LRE and provision of related services requirements. MSDE acknowledged gaps in its general supervisory system related to monitoring, reorganized its monitoring unit, and committed to forwarding OSEP updates regarding the impact on correcting the noncompliance related to the LRE and provision of related services requirements.

II. Nature of the Special Conditions

MSDE must submit to OSEP three reports according to the following schedule:

	Dates of Reporting Period	Date Quarterly Report Due to OSEP	Monitoring Visits Conducted
First Reporting Period	July 1-October 31, 2005	November 15, 2005	2003-2004 SY
Second Reporting Period	November 1-January 31, 2006	February 15, 2006	2004-2005 SY
Third Reporting Period	February 1, 2006-April 30, 2006	May 15, 2006	2004-2005 SY (continued)

Reports must include the following information:

1. Ensuring individualized placement decisions

Submit, for each monitoring report that identifies noncompliance with the obligation to ensure that students with disabilities are removed from the least restrictive environment (LRE) only if the child's disability is such that education in the regular classroom with the use of supplementary

aids and services cannot be achieved satisfactorily, documentation that demonstrates that the State has:

- a) Approved (or rejected) LEA corrective action plans;
- b) Verified implementation of those LEA corrective action plans; and
- c) Followed-up with specific activities to ensure ongoing compliance in those LEAs.

2. Ensuring the provision of all related services as a part of FAPE

Submit, for each monitoring report that identifies noncompliance with the obligation to ensure that all needed related services are provided as a part of FAPE, documentation that demonstrates that the State has:

- a) Approved (or rejected) LEA corrective action plans;
- b) Verified implementation of those LEA corrective action plans; and
- c) Followed-up with specific activities to ensure ongoing compliance in those LEAs.

III. Evidence Necessary for Conditions To Be Removed

The Department will remove the special conditions, if, at any time prior to the expiration of the grant year, Maryland provides documentation satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require Maryland to submit information demonstrating compliance with the requirements that individualized decision making for students with disabilities occur to ensure that they receive a free appropriate public education in the least restrictive setting and that all related services as indicated on children's IEPs are provided.

IV. Method of Requesting Reconsideration

MSDE may write to Troy Justesen, designated to act as the Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS), if it wishes the Department to reconsider any aspect of these Special Conditions. Any request of this sort should describe in detail the changes to the Special Conditions sought by MSDE and the reasons for those requested changes. The Special Conditions should be appended to all copies of your eligibility documents that you maintain, distribute, and make available to the public.

V. Submission of Reports

Reports must be submitted, in accordance with the time lines included in this enclosure, to:

Michael F. Slade
U.S. Department of Education
Office of Special Education and Rehabilitative Services
550 12 Street, SW, Room 4175
Washington, D.C. 20202-2600